

MAR 10 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL ANGEL ZACARIAS-ORTIZ,

Defendant - Appellant.

No. 05-55413

D.C. No. CV-04-00445-IEG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief District Judge, Presiding

Submitted February 26, 2008^{**}

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Miguel Angel Zacarias-Ortiz appeals the district court's denial of his 28 U.S.C. § 2255 motion to vacate his sentence imposed following his conviction for conspiracy to manufacture and distribute methamphetamine.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Zacarias-Ortiz contends that the trial court erred in enhancing his sentence based on judge-found facts, in violation of *United States v. Booker*, 543 U.S. 220 (2005), and *Blakely v. Washington*, 542 U.S. 296 (2004). Because Zacarias-Ortiz's conviction was final as of the dates the *Booker* and *Blakely* decisions were issued, his claim is foreclosed. *See United States v. Cruz*, 423 F.3d 1119, 1121 (9th Cir. 2005) (holding that "*Booker* is not retroactive, and does not apply to cases on collateral review where the conviction was final as of the date of *Booker's* publication"); *Schardt v. Payne*, 414 F.3d 1025, 1036 (9th Cir. 2005) (holding that *Blakely* does not apply retroactively to cases on collateral review in a 28 U.S.C. § 2254 habeas action).

AFFIRMED.